

Granted.

8:49 AM, Feb 23, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**



DAVID DURHAM	:	CASE NO. 1:18-CV-00091-SJD-KLL
	:	
Plaintiff.	:	JUDGE MATTHEW W. McFARLAND
	:	
v.	:	MAGISTRATE KAREN L. LITKOVITZ
	:	
DET. JERRY NIFFENEGGER, et al.	:	
	:	
Defendants.	:	

**DEFENDANTS' MOTION FOR 60-DAY EXTENSION OF EXPERT WITNESS
DISCLOSURE, DISCOVERY, AND DISPOSITIVE MOTION DEADLINES**

Now come the Defendants, by and through counsel, and request a 60-day extension of the expert disclosure and discovery, and a 90-day extension of the dispositive motion deadline. A brief memorandum in support is attached.

Respectfully Submitted,

/s/ Grant J. Bacon

Grant J. Bacon (0093708)
Daniel T. Downey (0063753)
Fishel Downey Albrecht & Riepenhoff LLP
7775 Walton Parkway, Suite 200
New Albany, OH 43054
ddowney@fisheldowney.com
gbacon@fisheldowney.com
*Counsel for Defendants Detective Jerry
Niffenegger and Detective Mark Purdy*

/s/ Nathan A. Lennon (per 2/22/2021 email auth)

Nathan A. Lennon (0091743)
Robert W. Hojnoski (0070062)
Reminger Co., LPA
525 Vine Street, Ste. 1700
Cincinnati, Ohio 45202
nlennon@reminger.com
rhojnoski@reminger.com
*Counsel for Wal-Mart Stores, INC.
& Scott Hollopeter*

/s/ Bradley L. Snyder (per 2/21/2021 email auth)

Bradley L. Snyder (0006276)
Roetzel & Andress, LPA 41 S. High Street
Huntington Center, 21st Floor
Columbus, Ohio 43215
bsnyder@ralaw.com
SHowardRicciardi@ralaw.com
Counsel for Target & James Christian

Memorandum in Support

Defendants recently requested a 45-day extension to disclose an expert witness and produce an expert report. (ECF Doc 71). At the time, Defendants had only recently been able to obtain the deposition testimony of Plaintiff David Durham on December 3, 2020. (ECF Doc. 70). During his deposition, Plaintiff Durham provided extensive testimony regarding his medical conditions which he claims are a result of the allegations contained in the Complaint. Defendants quickly undertook a search for a medical expert who could review available medical records as well as deposition testimony and render an opinion on the medical issues in this case. As consultations with experts have progressed, it has become clear that an independent medical examination (IME) of the Plaintiff is necessary to fully address the medical issues in this case, which was not initially anticipated.

As a result, Defendants respectfully request a 60-day extension of the Defendants' expert witness disclosure deadline to provide sufficient time for an IME to be conducted, relevant medical records and deposition testimony to be reviewed, and for a report to be drafted.

Trial has not yet been scheduled in this case. The parties are working diligently to move the case forward. The Parties have exchanged written discovery, gathered to conduct document review of tens of thousands of Plaintiff's business records, and have completed Plaintiff's deposition and Defendants Purdy and Niffenegger's depositions. Because a 60-day extension would set the expert witness disclosure deadline for May 2, 2021, two weeks before the current discovery and dispositive motion deadline on May 14, 2021, Defendants also respectfully request a corresponding 60-day extension of the discovery deadline to enable Plaintiff to depose Defendants' expert, if needed, and enable parties to complete needed fact witness discovery. Finally, Defendants respectfully request a 90-day extension of the dispositive motion deadline to enable sufficient time to fully brief the issues in this case following the close of discovery.

Respectfully submitted,

/s/ Grant J. Bacon

Daniel T. Downey (0063753)

Grant J. Bacon (0093708)

Fishel Downey Albrecht & Riepenhoff LLP

7775 Walton Parkway, Suite 200

New Albany, OH 43054

ddowney@fisheldowney.com

gbacon@fisheldowney.com

Counsel for Defendants Detective Jerry

Niffenegger and Detective Mark Purdy

/s/ Nathan A. Lennon (per 2/22/2021 email auth)

Nathan A. Lennon (0091743)

Robert W. Hojnoski (0070062)

Reminger Co., LPA

525 Vine Street, Ste. 1700

Cincinnati, Ohio 45202

nlennon@reminger.com

rhojnoski@reminger.com

Counsel for Wal-Mart Stores, INC.

& Scott Hollopeter

/s/ Bradley L. Snyder (per 2/21/2021 email auth)

Bradley L. Snyder (0006276)

Roetzel & Andress, LPA 41 S. High Street

Huntington Center, 21st Floor

Columbus, Ohio 43215

bsnyder@ralaw.com

Counsel for Target & James Christian

CERTIFICATE OF SERVICE

This certifies that the foregoing was filed electronically this 22nd day of February 2021. Notice of this filing will be sent to all counsel by operation of the Court's electronic filing system, as certified by the Court's Certificate of Service generated upon filing.

/s/ Grant J. Bacon

Grant J. Bacon (0093708)

Fishel Downey Albrecht & Riepenhoff, LLP

*Counsel for Defendants Detective Jerry Niffenegger
and Detective Mark Purdy*